

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

AMENDED IN ASSEMBLY MARCH 22, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 399

**Introduced by Assembly Member Feuer
(Coauthors: Assembly Members Berg, De Leon, and Hernandez)**

February 15, 2007

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 399, as amended, Feuer. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Health Services of health care facilities, including long-term health care facilities. Effective July 1, 2007, these duties are transferred to the State Department of Public Health.

Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill would require the department to complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended if the department has diligently attempted, but has not been able to obtain, necessary evidence related to the investigation. The bill would require the department, if it extends an

investigation beyond 40 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2008, that the department’s written determination provide specific findings concerning each alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department’s determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
 2 amended to read:
 3 1420. (a) (1) Upon receipt of a written or oral complaint, the
 4 department shall assign an inspector to make a preliminary review
 5 of the complaint and shall notify the complainant within two
 6 working days of the receipt of the complaint of the name of the
 7 inspector. Unless the department determines that the complaint is
 8 willfully intended to harass a licensee or is without any reasonable
 9 basis, it shall make an onsite inspection or investigation within 10
 10 working days of the receipt of the complaint. In any case in which
 11 the complaint involves a threat of imminent danger of death or
 12 serious bodily harm, the department shall make an onsite inspection
 13 or investigation within 24 hours of the receipt of the complaint.
 14 In any event, the complainant shall be promptly informed of the
 15 department’s proposed course of action and of the opportunity to
 16 accompany the inspector on the inspection or investigation of the
 17 facility. Upon the request of either the complainant or the
 18 department, the complainant or his or her representative, or both,
 19 may be allowed to accompany the inspector to the site of the
 20 alleged violations during his or her tour of the facility, unless the

1 inspector determines that the privacy of any patient would be
2 violated thereby.

3 (2) When conducting an onsite inspection or investigation
4 pursuant to this section, the department shall collect and evaluate
5 all available evidence and may issue a citation based upon, but not
6 limited to, all of the following:

7 (A) Observed conditions.

8 (B) Statements of witnesses.

9 (C) Facility records.

10 (3) The department shall complete its investigation within 40
11 working days from receipt of the complaint. The 40-working day
12 period may be extended if the department has diligently attempted,
13 but has not been able to obtain, necessary evidence related to the
14 investigation. The department shall analyze its compliance with
15 this requirement in its annual system and staffing analysis prepared
16 pursuant to subparagraph (B) of paragraph (2) of subdivision (d)
17 of Section 1266.

18 (4) If the department extends an investigation beyond 40
19 working days, it shall notify the complainant, in writing, of the
20 basis for the extension, and shall include in the notice any
21 outstanding evidence and the sources from which the evidence has
22 been sought, and the anticipated completion date.

23 (5) Within 10 working days of the completion of the complaint
24 investigation, the department shall notify the complainant and
25 licensee, in writing, of the department's determination as a result
26 of the inspection or investigation.

27 (6) Effective July 1, 2008, the department's written
28 determination shall provide specific findings concerning each
29 alleged violation, and shall include a summary of the evidence
30 upon which the determination is made. The written determination
31 shall not disclose the names of individual residents.

32 (b) Upon being notified of the department's determination as a
33 result of the inspection or investigation, a complainant who is
34 dissatisfied with the department's determination, regarding a matter
35 which would pose a threat to the health, safety, security, welfare,
36 or rights of a resident, shall be notified by the department of the
37 right to an informal conference, as set forth in this section. The
38 complainant may, within 15 days after receipt of the notice, notify
39 the director in writing of his or her request for an informal
40 conference. The informal conference shall be held with the

1 designee of the director for the county in which the long-term
2 health care facility which is the subject of the complaint is located.
3 The long-term health care facility may participate as a party in this
4 informal conference. The director’s designee shall notify the
5 complainant and licensee of his or her determination within 10
6 working days after the informal conference and shall apprise the
7 complainant and licensee in writing of the appeal rights provided
8 in subdivision (c).

9 (c) If the complainant is dissatisfied with the determination of
10 the director’s designee in the county in which the facility is located,
11 the complainant may, within 15 days after receipt of this
12 determination, notify in writing the Deputy Director of the
13 Licensing and Certification Division of the department, who shall
14 assign the request to a representative of the Complainant Appeals
15 Unit for review of the facts that led to both determinations. As a
16 part of the Complainant Appeals Unit’s independent investigation,
17 and at the request of the complainant, the representative shall
18 interview the complainant in the district office where the complaint
19 was initially referred. Based upon this review, the Deputy Director
20 of the Licensing and Certification Division of the department shall
21 make his or her own determination and notify the complainant and
22 the facility within 30 days.

23 (d) Any citation issued as a result of a conference or review
24 provided for in subdivision (b) or (c) shall be issued and served
25 upon the facility within three working days of the final
26 determination, unless the licensee agrees in writing to an extension
27 of this time. Service shall be effected either personally or by
28 registered or certified mail. A copy of the citation shall also be
29 sent to each complainant by registered or certified mail.

30 (e) A miniexit conference shall be held with the administrator
31 or his or her representative upon leaving the facility at the
32 completion of the investigation to inform him or her of the status
33 of the investigation. The department shall also state the items of
34 noncompliance and compliance found as a result of a complaint
35 and those items found to be in compliance, provided the disclosure
36 maintains the anonymity of the complainant. In any matter in which
37 there is a reasonable probability that the identity of the complainant
38 will not remain anonymous, the department shall also notify the
39 facility that it is unlawful to discriminate or seek retaliation against
40 a resident, employee, or complainant.

1 (f) For purposes of this section, “complaint” means any oral or
2 written notice to the department, other than a report from the
3 facility, of an alleged violation of applicable requirements of state
4 or federal law or any alleged facts that might constitute a violation
5 of these requirements.

6 ~~(g) The department shall comply with the time periods~~
7 ~~established for investigations and inspections of complaints in~~
8 ~~subdivisions (a), (b), (c), and (d) from a facility of an alleged~~
9 ~~violation of applicable requirements of state or federal law or any~~
10 ~~alleged facts that may constitute an alleged violation of these~~
11 ~~requirements.~~

12 *(g) The department shall apply the timeframes for investigation*
13 *or inspection established in this section to a report from the facility*
14 *of an alleged violation of applicable requirements of state or*
15 *federal law or any alleged facts that might constitute a violation*
16 *of those requirements.*

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